



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/28/2023 8:14:06 AM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Massage Therapy Licensure Board TITLE-SERIES: 194-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 194-01 General Provisions

PRIMARY CONTACT

NAME: WV MESSAGE THERAPY LICENSURE BOARD
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CHARLESTON, WV 25301
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CITE STATUTORY AUTHORITY: § 30-37-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2023

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING:

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

MODIFIED OUTDATED LANGUAGE, INCREASE MASSAGE THERAPY PROGRAM HOURS, ETC..

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

PASSAGE OF SB 665 DURING 2023 LEGISLATIVE SESSION.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NO INCREASE IN REVENUE OR EXPENDITURES.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Grady M Bowyer -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 194
LEGISLATIVE RULE
MESSAGE THERAPY LICENSURE BOARD

SERIES 1
GENERAL PROVISIONS

§194-1-1. General.

1.1. Scope. -- This rule establishes procedures for conducting the business of the Board, as well as establishing licensing procedures.

1.2. Authority. -- W. Va. Code §30-37-6.

1.3. Filing Date. -- ~~April 15, 2022.~~

1.4. Effective Date. -- ~~April 15, 2022.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect ~~upon the expiration from August 1, 2022~~ on August 1, 2034.

§194-1-2. Massage Therapy Board Fund; Expenses; Disposition of Funds.

2.1. All fees shall be made payable to the West Virginia Massage Therapy Licensure Board and deposited by the Board in its account established in the state treasurer's office.

2.2. Members of the Board shall receive the following compensation for their administration of the Board:

2.2.a. The members of the Board shall receive the same compensation and expense reimbursement for their services as is paid to members of the Legislature for interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day that the Board member engaged in the discharge of official duties.

2.2.b. The member may be reimbursed for his or her actual and necessary expenses incurred for each day or portion of a day that the Board member is engaged in the discharge of official duties in a manner consistent with the guidelines of the travel management office of the department of administration.

§194-1-3. Requirements for Licensure.

3.1. Application for licensure.

3.1.a. The Board shall furnish any person requesting an application for a license or temporary permit the necessary forms, and any other information or questionnaires required by the Board;

3.1.b. The application forms shall be designed to require the information necessary to satisfy the Board that all requirements pertaining to the W. Va. Code are being fulfilled; and shall require the applicant to provide the following:

3.1.b.1. All relevant personal information as determined by the Board;

3.1.b.2. An official letter proving graduation from a program of massage therapy education approved by a state agency in another state, the District of Columbia or a United States territory which approves educational programs, and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork prior to February 1, 2015 or the ~~West Virginia Higher Education Policy Commission~~ Council for Community and Technical Colleges, West Virginia Department of Education or any Board approved massage education both requiring a diploma from an accredited high school or the equivalent and completion of at least ~~five hundred (500)~~ six hundred twenty-five (625) hours of supervised academic training;

3.1.b.3. Proof of the successful completion of the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) exam prior to February 1, 2015; and

3.1.b.4. All applicable fees as set forth in this rule;

3.1.c. A license expires two (2) years from the end of the month it was issued.

3.2. Renewal of License. Licensees applying for renewal shall complete the application form provided by the Board with the following:

3.2.a. personal information;

3.2.b. the fee required by the Board; and

3.2.c. documentation of completion of twenty four (24) continuing education units within the preceding two (2) year licensing period that adhere to the NCBTMB, Federation of State Massage Therapy Boards (FSMTB) or Board approved guidelines.

3.3. Lapsed Licenses.

3.3.a. If any licensee fails for a period of thirty days after his or her license expires to apply to the Board for a renewal of his or her license, the Board shall send notification of the required renewal to the last known address of the licensee. If the licensee fails to apply to the Board for a renewal of his or her license within thirty days after receipt of the notification, the Board shall remove his or her name from the register of licensees and the license shall be considered lapsed.

3.3.b. In order for any licensee whose name has been removed from the register of the Board to again become licensed, the licensee shall appear personally before the Board, or an authorized committee of the Board, to show cause for permitting the license to lapse. If the person submits to the Board satisfactory reasons for allowing the license to lapse and satisfies the Board as to his or her qualifications to practice the profession, the Board shall reinstate that person upon payment of a reinstatement fee plus the renewal fee.

3.3.c. In lapsed license cases the Board determines necessary, the Board shall require the licensee to comply with all renewal license requirements, and may require a licensee whose license has lapsed to comply with the initial license requirements set forth by W. Va. Code §30-37-1, et seq., and by rule.

3.4. The Board may issue a reciprocal license to applicants otherwise qualified for licensure in West Virginia.

3.5. A massage therapist licensed outside of West Virginia applying for reciprocal West Virginia licensure, shall complete the application forms provided by the Board with the following:

3.5.a. personal information;

3.5.b. a photocopy of his or her current or most recent license;

3.5.c. any information regarding any pending or prior investigations or disciplinary actions pertaining to his or her licensure. This shall include statements from any and all states in which the applicant is currently or formerly licensed;

3.5.d. documentation of the applicant's continuing education units (CEU'S) completed in the last two (2) years; and

3.5.e. for an applicant who is Nationally Certified, a photocopy of his or her current National Certification Board for Therapeutic Massage and Bodywork certificate.

3.6. Massage therapists applying for a renewal or reciprocal license shall meet the current standards for continuing education hours required by the Board. ~~to conform to the National Certification Board for Therapeutic Massage and Bodywork guidelines.~~

3.7. An applicant who applies for a license in West Virginia and who is not licensed in any other state, the District of Columbia or a United States territory or any other country or province shall meet the requirements as set forth in this rule.

3.8. All licensees and those applicants who apply for a license in West Virginia are required to keep or have a record of continuing education units including the title, (workshop, etc.), the date, place, number of hours of instruction, instructor's name, sponsor of the class, and the person to call to verify attendance (sponsoring group or instructor). The Board may audit a certain number of licensees every two (2) years, and may ask applicants to provide the information listed in this subsection.

3.9. Applicants for licensure who have completed a program of massage therapy two years or more prior to making application for licensure shall additionally be required to complete and provide proof of completion of all continuing educational requirements as if the applicant had been licensed by the Board during the time prior to the submission of the applicant's application for licensure.

3.10. The Board may audit any applicant to verify credentials or request information.

3.11. Each licensee shall publicly display his or her current valid license at his or her primary work site. A duplicate license, issued by the Board, shall be displayed at his or her secondary place of employment.

3.12. The Board may at any time inspect the place of employment of the licensee.

3.13. If an applicant fails to complete all forms and to provide all information as required by an application for licensure or renewal of licensure, the Board may reject and return the application to the applicant.

3.14. The Board shall grant a license to any applicant who meets all the requirements set forth in this rule.

3.14.a. The Board may suspend, revoke or impose probationary conditions on a licensee who fails to comply with the requirements of this rule.

3.14.b. A license shall include at least the following information: the licensee's full name; the date of issuance; the seal of West Virginia; the license number; and the signature of the chairperson or the secretary of the Board.

3.15. A massage therapist applying for a renewal, or reciprocal license shall meet the current standards for continuing education hours required by the Board under and offered by approved providers for the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB), Federation of State Massage Therapy Boards (FSMTB), American Massage Therapy Association (AMTA), Associated Bodywork and Massage Professionals (ABMP) guidelines and any other Board approved provider. Failure to comply with the current standards for continuing education as required by ~~NCBTMB~~ the Board, is grounds for revocation or suspension under the provisions of this rule.

§194-1-4. Standards Relating to the Practice of Massage Therapy; Professional Misconduct.

4.1. The licensee shall know the statutes and rules governing massage therapy and function within the legal boundaries of the massage therapy practice. The Board may suspend, revoke, or otherwise discipline a licensee who violates any provision of W. Va. Code §30-37-1, et seq., and this rule, or who is guilty of professional misconduct. A licensee shall:

4.1.a. Maintain documentation of compliance with all applicable state or local government rules;

4.1.b. Conduct massage therapy only in rooms which are adequately lighted and ventilated, and which are kept clean. Restroom facilities with a toilet, sink with hot and cold running water, soap, and clean towels and adequate toilet tissue must be available;

4.1.c. Maintain a reasonable effort for sanitation for temporary locations such as athletic events or public service fund raisers in temporary venues;

4.1.d. Maintain all equipment and supplies used to perform massage services in a safe and sanitary condition. Lotions, creams, and oils shall be kept free of possible bacterial contamination;

4.1.e. Wash his or her hands in hot, soapy water or other antibacterial substance before and after each massage therapy treatment;

4.1.f. Launder, before reuse, all materials furnished for the personal use of the massage therapy client, such as towels, linens and any draping materials;

4.1.g. Before proceeding with the massage of a client, explain expected draping techniques and provide the client a clean drape or drapes for the purpose of covering the body in accordance with generally-accepted standards of practice;

4.1.h. Before proceeding with breast massage therapy, the client shall provide a written medical directive to the massage therapist in advance of performing breast massage therapy. The medical directive shall be included in the client file. The massage therapist shall also obtain informed, written consent ~~in~~ prior to performing breast massage. A breast massage shall only be performed as indicated in the medical directive prescribed by a medical doctor, doctor of osteopathy, physician assistant, or an advanced practice registered nurse and also indicated in a plan of care. Failure to comply with this subdivision constitutes grounds for revocation of license;

4.1.i. Obtain instruction and supervision as necessary when implementing massage therapy techniques or practices;

194CSR1

4.1.j. Report any unsafe massage therapy practice and/or violation of law by other licensees to the Board and recognized legal authorities;

4.1.k. Conduct practice without discrimination on the basis of age, race, religion, gender, sexual preference, socio-economic status, national origin, handicap, or disease;

4.1.l. Respect the dignity and rights of clients regardless of social or economic status, personal attributes, or nature of the client's health problems;

4.1.m. Respect the client's right to privacy by protecting confidential information unless obligated by law to disclose the information;

4.1.n. Obtain voluntary and informed consent from the client prior to initiating the massage therapy session;

4.1.o. Be knowledgeable of his or her competent scope of practice and practice only within these limitations;

4.1.p. Refer to other professionals when in the best interest of the client and/or practitioner;

4.1.q. Maintain accurate and truthful records;

4.1.r. Maintain client files for a minimum period of four years, and store and dispose of client files in a secure manner;

4.1.s. Refrain from engaging in any sexual activity with a client;

4.1.t. Refrain from massaging, touching or otherwise exposing the genitalia of the client; and

4.1.u. Refrain from practicing massage therapy while under the influence of alcohol, drugs, or any illegal substances.

4.2. A licensee shall acknowledge and sign an agreement to uphold the Code of Ethics adopted by the National Certification Board for Therapeutic Massage and Bodywork, and comply with the Standards of Practice promulgated by the National Certification Board for Therapeutic Massage and Bodywork.

4.3. Conduct including, but not limited to, the following constitutes professional misconduct where the licensee:

4.3.a. failed to adhere to common and current standards for professional massage therapy practice, including but not limited to standards established by a national massage therapy organization, or the Board;

4.3.b. knowingly committed an act which could adversely affect the physical or psychological welfare of a client;

4.3.c. practiced or offered to practice beyond the scope permitted by law or accepted and performed professional responsibilities that the licensee knows or has reason to know that he or she is not licensed, qualified, or competent to perform;

4.3.d. impersonated another licensed practitioner;

194CSR1

- 4.3.e. permitted another person to use the licensee's license for any purpose;
- 4.3.f. permitted, aided, or abetted an unlicensed, uncertified, or unregistered person to perform activities requiring a license, certificate, or registration;
- 4.3.g. delegated professional responsibilities to a person when the licensee delegating the responsibilities knows or has reason to know that person is not qualified by training, experience or licensure to perform them;
- 4.3.h. practiced massage therapy while his or her license is suspended, lapsed, or inactive;
- 4.3.i. failed to comply with terms and conditions imposed by the Board based upon previous disciplinary action of the Board;
- 4.3.j. practiced massage therapy while his or her ability to safely and effectively practice is compromised by alcohol or drugs;
- 4.3.k. is addicted to a controlled substance, or is a chronic or persistent alcoholic;
- 4.3.l. engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member of the public; thus, not exercising good professional character;
- 4.3.m. practiced massage therapy while his or her ability to safely and effectively practice was compromised by physical or mental disability;
- 4.3.n. provided false or incorrect information to an employer or potential employer regarding the status of a license, or failed to inform an employer or potential employer of a change in the status of a license;
- 4.3.o. knowingly falsified an application for employment;
- 4.3.p. knowingly provided false information regarding completion of educational programs;
- 4.3.q. falsified client records;
- 4.3.r. knowingly made or filed a false report;
- 4.3.s. knowingly or negligently failed to file a report or record required by state or federal law;
- 4.3.t. willfully impeded or obstructed the filing of a report or record required by state or federal law;
- 4.3.u. induced another person to file a false report or obstructed the filing of a report required by state or federal law;
- 4.3.v. failed to report to the Board within thirty (30) days, knowledge of a violation by a licensee of W. Va. Code §30-37-1 et seq., this rule, any other applicable state law or rule or any applicable federal law or regulation;

194CSR1

4.3.w. failed to report through proper channels a violation of any applicable state law or rule, any applicable federal law or regulation or the incompetent, unethical, illegal, or impaired practice of another person who provided health care;

4.3.x. impeded or obstructed an investigation by the Board by failing to comply or respond to requests for action or information, whether the failure was known or negligent;

4.3.y. violated any provision of W. Va. Code §30-37-1 et seq., or rules governing the practice of massage therapy, or order of the Board, or failed to comply with a subpoena or subpoena duces tecum issued by the Board;

4.3.z. failed to register or notify the Board of any changes of name or mailing address;

4.3.aa. failed to accept certified mail from the Board, when mailed to the licensee's last address on record in the Board's office;

4.3.bb. provided false information on any application, or any other document submitted to the Board for the purpose of licensure;

4.3.cc. misappropriated medications, supplies, or personal items of a client or employer;

4.3.dd. self-administered or otherwise took into his or her body any prescription drug in any way not in accordance with a legal, valid prescription or used any illicit drug;

4.3.ee. physically or verbally abused, or failed to provide adequate protection or safety for an incapacitated individual in the context of a therapist/client relationship;

4.3.ff. used the therapist-patient/client relationship to exploit a patient or client;

4.3.gg. engaged a patient or client in sexual activity or became romantically involved with a patient or client while still responsible for the care of that patient or client;

4.3.hh. failed to maintain appropriate professional boundaries in the therapist-patient/client relationship;

4.3.ii. failed to report that his or her license to practice massage therapy in any other state, territory, jurisdiction or foreign nation was revoked, suspended, restricted or limited, or otherwise acted against, that he or she was subjected to any other disciplinary action by the licensing authority, or that he or she was denied licensure in any other state, territory, jurisdiction, or foreign nation; or

4.3.jj. was found guilty for improper professional practice or professional misconduct by a duly authorized professional disciplinary agency or licensing or certifying body or Board in this or another state or territory, where the conduct upon which the finding was based would, if committed in this state, constitute professional misconduct under the laws of this state, may serve as a basis for disciplinary action by this Board.

§194-1-5. Relating to the Practice of Telehealth

5.1. The Board will not issue a license for the practice of telehealth for massage therapy due to being an in person and hands on profession.